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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 871

ANTHONY ANGELET AND WILLIAM ANGELET,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 68–73) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 22, 1956 (R. 74). The petition for a writ of certiorari was filed April 17, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the trial court, which had charged the jury that petitioners could use such force as was necessary in self-defense and that they had a right to resist unlawful arrest, committed reversible error in refusing to give a requested charge that petitioners could use sufficient force to meet that of the arresting officers.

STATUTE INVOLVED

18 U. S. C. 111 provides:

> Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.
>
> Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT

A six-count indictment charged petitioners with having violated 18 U. S. C. 111 by assaulting and interfering with two narcotic agents while they were engaged in the performance of official duties, and by using deadly weapons during the assault (R. 4–6). A jury found them guilty on all counts (R. 45) and each was sentenced to concurrent sentences of five years imprisonment on

the counts in which he was named (R. 49, 50–51). On appeal, the convictions were affirmed (R. 75).

The evidence adduced by the government was that the two narcotic agents approached William Angelet, and sought to question him regarding a fugitive (R. 54–55, 60–61). Instead of answering or refusing to answer the question, William called to Anthony Angelet, who, upon arrival on the scene, immediately assaulted one of the agents (R. 55, 61–63). While the two agents were attempting to subdue Anthony, William also attacked an agent, and produced a knife in the ensuing scuffle (R. 55, 62). The agents took petitioners into a bar and another attack occurred (R. 56–58, 63–64). Subsequently, at the Bureau of Narcotics there was another scuffle (R. 59–60, 66–67).

Petitioners' evidence was to the effect that the agents were attempting to arrest William, that petitioners were merely resisting the arrest, and that any acts of violence committed by them were performed in self-defense (See R. 37). They denied the use of deadly weapons (R. 37).

The issue presented to this Court by petitioners concerns the district court's charge to the jury on petitioners' defense that any acts of violence on their part were done while they were resisting unlawful arrest (Pet. 5–8). The trial judge first explained to the jury the petitioners' right to self-defense (R. 33):

> The defendants here contend, by their plea of not guilty and by their testimony

> on the witness stand, that they did not assault, resist, oppose, impede, intimidate or interfere with the federal officers in the performance of their duties, and that any acts of force or violence committed by them were performed in self-defense. If the defendants had reasonable cause to believe by the words, acts or conduct of the federal agents that they had a design—that is, the federal agents had a design to do either of them bodily injury, and that such design was about to be accomplished, then the defendant had a right to act on all appearances and *to use such force that to them seemed necessary to prevent such injury.* * * * [Emphasis added.]

He then read to the jury petitioners' request Number 12 for a charge in regard to their right to resist unlawful arrest, as follows (R. 35):

> A federal officer has no right to effect an arrest without a warrant unless a misdemeanor is committed in his presence or there is some basis for reasonable ground for him to believe that a felony had been factually or actually committed in his absence, and if the jury believes that the Government has failed to prove the commission of any crime, then the defendants had a right to resist arrest.

Exception was noted by petitioners (R. 39) to the trial judge's refusal to give their requested charge Number 11 (R. 26), which included a statement touching upon the amount of force they

could lawfully use in resisting illegal arrest, as follows:

> A Federal officer has no right to violate the rights of a citizen, and a citizen is secure in his person and effects, unless the Federal officer witnessed the commission of a misdemeanor, or had reasonable grounds to believe that a felony had been committed. Should the jury find that a misdemeanor was not committed in the presence of the Government witnesses, or that they had no basis upon which to believe a felony had been committed, then they must determine that the defendants had a right to resist unwarranted arrest and could use sufficient force to meet that of the arresting officers to resist their unlawful arrest.

The Court of Appeals found that petitioners' request for charge Number 11 was properly refused, as its language and implication were too broad in saying that petitioners might use "sufficient force" to resist unlawful arrest (R. 73). It further found that petitioners' request for charge Number 12 on the right to resist unlawful arrest, as given, was more favorable to petitioners than necessary, but that it did adequately set forth the theory of the defense (R. 73).

ARGUMENT

1. Petitioners' contention that the trial judge committed reversible error in failing to charge the jury as to the amount of force which petition-

ers could use to resist unlawful arrest (Pet. 5) ignores the earlier part of the charge in which the judge explained petitioners' claim to be that they acted in self-defense and that they had the right to use such force in self-defense as seemed necessary (*supra*, pp. 3–4). There was no need to repeat this standard of force when the judge gave the specific charge that petitioners had the right to resist illegal arrest, since, as noted by the court below (R. 73), "the right to resist unlawful arrest is a phase of the right of self-defense," and the district judge made it clear, *supra*, pp. 3–4, that the claim of self-defense was part of petitioners' defense that they were not guilty of resisting the officers. Cf. *Wilkinson* v. *State*, 143 Miss. 324, 103 So. 711, 712.

Petitioners themselves argue that there is no distinction between such force as is "necessary" and such force as is "sufficient" (Pet. 5–6). Hence the district court's earlier charge that "necessary" force could be used made superfluous the charge requested by petitioners that "sufficient" force could be used.

As the Court of Appeals pointed out, the language of petitioners' request Number 11, *i. e.*, "sufficient force to meet that of the arresting officers," was too broad. The test of the right to resist illegal arrest established by this Court in *John Bad Elk* v. *United States*, 177 U. S. 529, on which petitioners rely (Pet. 5–7), is "such force as was absolutely necessary". The stand-

ard of "necessary" force[1] which the judge used in charging the jury in this case (see *supra*, p. 4) was therefore the correct standard, and petitioners were entitled to no more favorable charge than the trial court gave.

2. Petitioners' contention (Pet. 7, 8) that the decision of the court below conflicts with the decision of this Court in *John Bad Elk* v. *United States*, 177 U. S. 529 and with the decision of the United States Court of Appeals for the Fifth Circuit in *Brown* v. *United States*, 47 F. 2d 681, is without substance. Each of those cases was reversed because the trial judges, respectively, had, in effect, instructed the jury that the defendant had no right at all to resist unlawful arrest. In the *Bad Elk* case this Court clearly recognized the established rule to be that only such force as is absolutely necessary may be used to resist an illegal arrest (177 U. S. at pages 535 and 537). And in the *Brown* case, the Court of Appeals for the Fifth Circuit placed its stamp of approval on a requested instruction that such force as is necessary to prevent an illegal arrest may be used (47 F. 2d at page 681–682). Since, in the instant case, there was an instruction on the right to resist illegal arrest which was equivalent to the rule recognized by this Court in the *Bad Elk* case, the decision below is clearly correct and presents no conflict with the decision of this

[1] Petitioners concede that the use of the word "absolutely" does not change the meaning of the word necessary (Pet. 6).

Court in that case, or with the decision of the Court of Appeals for the Fifth Circuit in the *Brown* case.[2]

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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MAY 1956.

[2] The other questions raised but not argued (Pet. 2) were considered and properly rejected by the court below (R. 71–72) in the application of settled principles to the facts of this case.

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